

COMMITTEE REPORT

MR. PRESIDENT:

The Senate Committee on Commerce and Consumer Affairs, to which was referred House Bill No. 1653, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Page 1, line 1, delete "32-7-7" and insert "32-7-8".
- 2 Page 1, line 4, delete "7." and insert "8.".
- 3 Page 2, line 18, after "agreement." insert "**The landlord and tenant**
- 4 **may agree in a writing separate from the rental agreement that the**
- 5 **landlord may hold property voluntarily tendered by the tenant as**
- 6 **security in exchange for forbearance from an action to evict."**
- 7 Page 2, line 26, delete ":" and insert "**have surrendered possession**
- 8 **of the dwelling unit."**
- 9 Page 2, delete lines 27 through 29.
- 10 Page 2, line 33, delete "quiet enjoyment" and insert "**possession**".
- 11 Page 2, line 40, after "Interrupting," insert "**reducing,**".
- 12 Page 3, line 2, after "construction." insert "**This subdivision does**
- 13 **not require a landlord to pay for services described in this**
- 14 **subdivision if the landlord has not agreed, by a written rental**
- 15 **agreement, to do so.**
- 16 (d) A tenant may not interrupt, reduce, shut off, or cause
- 17 termination of electricity, gas, water, or other essential services to
- 18 the dwelling unit if the interruption, reduction, shutting off, or
- 19 termination of the service will result in serious damage to the
- 20 rental unit.

SECTION 2. IC 32-7-9 IS ADDED TO THE INDIANA CODE AS
A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
1, 1999]:

Chapter 9. Emergency Possessory Orders

Sec. 1. The definitions in IC 32-7-5 and IC 32-7-8 apply throughout this chapter.

Sec. 2. The small claims docket of a court has jurisdiction to grant an emergency possessory order under this section.

Sec. 3. The following may file an action for an emergency possessory order under this chapter:

(1) A tenant, if the landlord has violated IC 32-7-8-7.

(2) A landlord, if the tenant has committed, or threatens to commit, waste to the rental unit.

Sec. 4. A claim for an order under this chapter must satisfy the following:

(1) Include an allegation specifying both of the following:

(A) The violation, act, or omission caused or threatened by a landlord or tenant.

(B) The nature of the specific immediate and serious injury, loss, or damage that the landlord or tenant has suffered or will suffer if the violation, act, or omission is not enjoined.

(2) Be sworn to by the claimant.

Sec. 5. If a tenant or a landlord petitions the court to issue an order under this chapter, the court shall immediately do the following:

(1) Review the petition.

(2) Schedule an emergency hearing for not later than three (3) business days after the petition is filed.

Sec. 6. (a) At the emergency hearing, if the court finds:

(1) probable cause to believe that the landlord has violated or threatened to violate IC 32-7-8-7; and

(2) that the tenant will suffer immediate and serious injury, loss, or damage;

the court shall issue an emergency order under subsection (b).

(b) If the court makes a finding under subsection (a), the court shall order the landlord to do either or both of the following:

(1) Return possession of the dwelling unit to the tenant if the

1 tenant has been deprived of possession of the dwelling unit.

2 (2) Refrain from violating IC 32-7-8-7.

3 (c) The court may make other orders that the court considers
4 just under the circumstances, including setting a subsequent
5 hearing at the request of a party to adjudicate related claims
6 between the parties.

7 Sec. 7. (a) At the emergency hearing, if the court finds:

8 (1) probable cause to believe that the tenant has committed,
9 or threatens to commit, waste to the rental unit; and

10 (2) that the landlord has suffered or will suffer immediate and
11 serious injury, loss, or damage;

12 the court shall issue an order under subsection (b).

13 (b) If the court makes a finding under subsection (a), the court
14 shall order the tenant to do either or both of the following:

15 (1) Return possession of the dwelling unit to the landlord.

16 (2) Refrain from committing waste to the dwelling unit.

17 (c) The court may make other orders that the court considers
18 just under the circumstances, including setting a subsequent
19 hearing at the request of a party to adjudicate related claims
20 between the parties.

21 Sec. 8. (a) When a petition is filed under this chapter, the clerk
22 shall issue to the respondent a summons to appear at a hearing
23 that:

24 (1) gives notice of the date, time, and place of the hearing; and

25 (2) informs the respondent that the respondent must appear
26 before the court to answer the petition.

27 (b) The clerk shall serve the respondent with the summons to
28 appear in accordance with Rule 4.1 of the Rules of Trial
29 Procedure.

30 (c) The court shall not grant a continuance of the emergency
31 hearing except upon clear and convincing evidence that manifest
32 injustice would result if a continuance were not granted.

33 Sec. 9. If the court sets a subsequent hearing under section 6(c)
34 or 7(c) of this chapter, the court may do the following at the
35 subsequent hearing:

36 (1) Determine damages.

37 (2) Order return of a tenant's withheld property.

38 (3) Make other orders the court considers just under the

1 circumstances.

2 **Sec. 10. The adjudication of an emergency possessory claim**
 3 **under section 6(b) or 7(b) of this chapter does not bar a subsequent**
 4 **claim a party may have against the other party arising out of the**
 5 **landlord and tenant relationship unless that claim has been**
 6 **adjudicated under section 9 of this chapter.**

7 SECTION 3. IC 33-4-3-7 IS AMENDED TO READ AS FOLLOWS
 8 [EFFECTIVE JULY 1, 1999]: Sec. 7. The small claims docket has
 9 jurisdiction over the following:

10 (1) Civil actions in which the amount sought or value of the
 11 property sought to be recovered is not more than three thousand
 12 dollars (\$3,000). The plaintiff in a statement of claim or the
 13 defendant in a counterclaim may waive the excess of any claim
 14 that exceeds three thousand dollars (\$3,000) in order to bring it
 15 within the jurisdiction of the small claims docket.

16 (2) Possessory actions between landlord and tenant in which the
 17 rent due at the time the action is filed does not exceed three
 18 thousand dollars (\$3,000).

19 **(3) Emergency possessory actions between a landlord and**
 20 **tenant under IC 32-7-9.**

21 SECTION 4. IC 33-5-2-4 IS AMENDED TO READ AS FOLLOWS
 22 [EFFECTIVE JULY 1, 1999]: Sec. 4. The small claims docket has
 23 jurisdiction over the following:

24 (1) Civil actions in which the amount sought or value of the
 25 property sought to be recovered is not more than three thousand
 26 dollars (\$3,000). The plaintiff in a statement of claim or the
 27 defendant in a counterclaim may waive the excess of any claim
 28 that exceeds three thousand dollars (\$3,000) in order to bring it
 29 within the jurisdiction of the small claims docket.

30 (2) Possessory actions between landlord and tenant in which the
 31 rent due at the time the action is filed does not exceed three
 32 thousand dollars (\$3,000).

33 **(3) Emergency possessory actions between a landlord and**
 34 **tenant under IC 32-7-9.**

35 SECTION 5. IC 33-5-19.3-11 IS AMENDED TO READ AS
 36 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 11. (a) The court has
 37 a standard small claims and misdemeanor division.

38 (b) Notwithstanding IC 33-5-2-4, the small claims docket has

1 jurisdiction over the following:

2 (1) Civil actions in which the amount sought or value of the
3 property sought to be recovered is not more than six thousand
4 dollars (\$6,000). The plaintiff in a statement of claim or the
5 defendant in a counterclaim may waive the excess of any claim
6 that exceeds six thousand dollars (\$6,000) in order to bring the
7 claim within the jurisdiction of the small claims docket.

8 (2) Possessory actions between landlord and tenant in which the
9 rent due at the time the action is filed does not exceed six
10 thousand dollars (\$6,000).

11 **(3) Emergency possessory actions between a landlord and**
12 **tenant under IC 32-7-9.**

13 SECTION 6. IC 33-10.5-7-1 IS AMENDED TO READ AS
14 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. Each judge of the
15 county court shall maintain the following dockets:

16 (1) An offenses and violations docket.

17 (2) A small claims docket for **the following:**

18 (A) All cases where the amount sought or value of the property
19 sought to be recovered is three thousand dollars (\$3,000) or
20 less; the plaintiff in a statement of claim or the defendant in a
21 counterclaim may waive the excess of his claim over three
22 thousand dollars (\$3,000) to bring it within the jurisdiction of
23 the small claims docket. ~~and~~

24 (B) All possessory actions between landlord and tenant in
25 which the rent due at the time the action is filed does not
26 exceed three thousand dollars (\$3,000).

27 **(C) Emergency possessory actions between a landlord and**
28 **tenant under IC 32-7-9.**

29 (3) A plenary docket for all other civil cases.

30 SECTION 7. IC 33-11.6-4-3.5 IS ADDED TO THE INDIANA

1 CODE AS A NEW SECTION TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 1999]: **Sec. 3.5. The court has original and**
3 **concurrent jurisdiction with the circuit and superior court in**
4 **emergency possessory actions between a landlord and tenant under**
5 **IC 32-7-9."**

(Reference is to HB 1653 as printed February 25, 1999.)

and when so amended that said bill do pass.

Committee Vote: Yeas 7, Nays 1.

Mills

Chairperson